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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,496	06/05/2001	Bradley J. McGill	053775-5001	4960
28977 7590 01/10/2008 MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			EXAMINER AKINTOLA, OLABODE	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 01/10/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/857,496

Applicant(s)

MCGILL ET AL.

Examiner

Olabode Akintola

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 65-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 65-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 68 and 69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 68 and 69 the phrase "with outcome states that are not mutually exclusive" is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, has possession of the invention. There is no mention of anything relating to mutual exclusivity of the outcome states in the original disclosure. Therefore it would not be obvious to one of ordinary skill in the art

that the outcome states are not mutually exclusive. The phrase “with outcome states that are not mutually exclusive” is considered to be a negative limitation. Any negative limitation or exclusionary provision must have basis in the original disclosure. See MPEP § 2173.05(i).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange (USPAP 20020099640) (“Lange”).

Re claims 65 and 67: Lange teaches a method and machine readable medium for creating and trading a group of at least first and second related financial product, comprising: identifying an interest rate, said interest rate having a first value corresponding to the interest rate at a first time (sections 0028, 0041, 0578); identifying an expiry and a fixed payout (sections 0526, 0687,

0926); identifying a first premium to be paid by a buyer of the first financial product when the first financial product is issued (sections 0042, 0713); selecting a first value change in the interest rate, wherein the first value change comprises an absolute change in value of the interest rate and a direction of change in the value of the interest rate; subsequent to the identifying of the fixed payout, executing a first transaction between a seller and the buyer of the first financial product wherein the seller receives the first premium from the buyer of the first financial product and in exchange agrees to pay the buyer of said first financial product the fixed payout if, between the first time and expiry, the value of the interest rate meets a first strike rate, wherein the first strike rate is a sum of the first value and the first value change; and wherein said first financial product is worth nothing to the buyer of the first financial product if, between the first time and expiry, the value of the interest rate fails to meet the first strike rate (sections 0037, 0038, 0041-0043, 0713); identifying a second premium to be paid by a buyer of the second financial product when the second financial product is issued (sections 0042, 0713); selecting a second value change in the interest rate, wherein the second value change is different from the first value change, and the second value change comprises an absolute change in value of the interest rate and a direction of change in the value of the interest rate; subsequent to the identifying of the fixed payout, executing a second transaction between a seller and the buyer of the second financial product wherein the seller receives the second premium from the buyer of the second financial product and in exchange agrees to pay the buyer of the second financial product the fixed payout if, between the first time and expiry, the value of the interest rate meets a second strike rate, wherein the second strike rate is a sum of the first value and the second value change; and wherein said second financial product is worth nothing to the buyer of the

second financial product if, between the first time and expiry, the value of the interest rate fails to meet the second strike rate (sections 0037, 0038, 0041-0043, 0713); and providing a common electronic platform where a plurality of buyers purchase each of the related financial products in the group, and wherein said plurality of buyers include one or more buyers that are not counterparties to the first or second transaction (Abstract).

Lange does not explicitly teach wherein the seller represents the only counterparty of the buyer of the financial products. However, Lange teaches “all traders for a group of DBAR contingent claims depending on a given event become counterparties to each other” (section 0050). One of ordinary skill in the art at the time of the invention would recognize that *all traders* as mention above include two or more traders forming counterparties with each other. Counterparties can be formed with two traders (a buyer and a seller). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have all traders as simply two traders for the obvious reason of accommodating instances where there is only one seller.

Re claim 66: Lange teaches the step wherein said financial product is offered on a trading exchange, and may be accepted by another participant in the trading exchange (Abstract, sections 0054-0055).

Re claims 68 and 69: Lange teaches wherein the first and second financial products correspond to digital options (abstract, 0686). Lange does not teach that the outcome states are not mutually exclusive. However, having the outcome states that are not mutually exclusive is a matter of design choice (section 0006). Therefore it would have been obvious to one of ordinary skill in

the art at the time of the invention to have outcome states that are not mutually exclusive simply as a matter of design choice.

**Examiner's Note:** Examiner has cited particular portions of the reference(s) as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olabode Akintola whose telephone number is 571-272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA

*[Handwritten signature]*

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